

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LISA JONES, *et al.*,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

Case No. 19-0102-CV-W-BP

Hon. Beth Phillips

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF UPDATED CLASS ACTION SETTLEMENT
AND APPROVAL OF UPDATED FORM AND MATTER OF NOTICE**

With Defendant Monsanto Company’s (“Monsanto” and, collectively with Plaintiffs, the “Parties”) consent, Plaintiffs move for preliminary approval of an Updated Settlement Agreement¹ and Updated Notice Plan.

BACKGROUND

On March 23, 2020, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement, Certification of Class for the Purposes of Settlement, and Approval of Form and Matter of Notice. (Dkt. No. 49. (“First Preliminary Approval Motion”)) The Court granted that motion on May 14, 2020 and entered an order setting forth, among other dates, a 90-day Notice Period. (Dkt. No. 53.)

The original Notice Period commenced on May 28, 2020 and ended on August 28, 2020. From the outset of the Notice Period, May 28, 2020, the Claims Administrator ran the Notice Plan as approved by the Court, meeting the reach and frequency targets set forth in the Notice Plan. (Declaration of Brandon Schwartz (“Schwartz Decl.”) ¶¶ 4-6, 9-11, 23-26.) Beginning in mid-July, the Claims Administrator also began running a supplemental notice program to amplify notice and stimulate claims activity, in light of the national attention on COVID-19, protests, and related news. (*Id.* ¶¶ 7-8, 12-22.) This supplemental notice program included an enhanced digital marketing campaign, direct email notice to millions of potential purchasers of the product, notice in digital newsletters, and paid placement on leading class-action websites. (*Id.*)

The implementation of the Notice Plan and supplemental notice program have been successful in stimulating claims activity and in exceeding the reach and frequency targets set forth in the Notice Plan. (*Id.* ¶ 23-26.)

¹ The Updated Settlement Agreement is attached to the Declaration of Kim E. Richman (“Richman Decl.”) as Exhibit 1. All capitalized terms herein have the meaning specified in the Updated Settlement Agreement.

Nonetheless, in light of the unique challenges posed by current news cycles and the amount of funds available in the Common Fund, the Parties wish to update the Settlement Agreement and Notice Plan in order to maximize the ability of Class Members to recover from the Common Fund.

The Updated Settlement Agreement and Notice Plan make only modest changes to the material terms that were preliminarily approved by the Court. The Court should therefore grant this Motion for all of the reasons described in supporting papers of the Original Preliminary Approval Motion, as well as for the reasons described below.

PROPOSED UPDATES TO SETTLEMENT AGREEMENT AND NOTICE PLAN

I. Updated Settlement Agreement

The parties have agreed to revise Section E.4 of the Settlement Agreement to provide for the possibility of upward adjustment of payments to Claimants on a pro rata basis. Specifically, in the event that the total value of claims falls short of the amounts available in the Common Fund after the updated class notice and notice plan described below is implemented, payments to Claimants shall be increased pro rata up to an amount not to exceed 50% of the weighted average retail price of the Products purchased. The Parties maintain that the 10% payment contemplated by the Settlement is a fair and reasonable payment to claimants for all of the reasons articulated in the Suggestions in support of the first Preliminary Approval Motion. *See* Dkt. No. 50. Nonetheless, in light of claims activity to date and the possibility of surplus funds, this revision will allow Class Members to potentially recover amounts far exceeding the estimated damages available in the litigation. *See id.* at 8.

Additionally, the parties have updated Exhibit B to the Settlement Agreement in order to identify the applicable statutes of limitations for all U.S. territories. This is consistent with the

existing Class definition, which includes all Persons in the United States who purchased the Products in the United States. (Updated Settlement Agreement ¶ A.11.)

Finally, the parties have updated Section M of the Settlement Agreement to name the Center for Consumer Law & Economic Justice as an additional proposed *cy pres* recipient, subject to the Court's approval.

II. Updated Class Notice and Notice Plan

The parties have agreed to implement an Updated Notice Plan in the form described in the Declaration of Brandon Schwartz, attached hereto. The Updated Notice Plan shall include most of the methods of notice in the original Notice Plan; those methods adopted in the supplemental notice program first implemented in July 2020 (*see supra*); and additional methods of notice, including television and radio advertising. (Schwartz Decl. ¶¶ 32-26, 40-47.) Additionally, the Updated Class Notice will inform Class Members of the potential for pro rata increases to payment amounts. (*Id.* ¶¶ 27, 31.) Updated versions of the Short Form Notice, Long Form Notice, and Claims Form are attached to the Declaration of Brandon Schwartz. The parties have agreed to implement this Updated Notice Plan for a period of 90 days, following approval by the Court.

CONCLUSION

For all the reasons described in the First Preliminary Approval Motion, and herein, Plaintiffs ask the Court to issue an Order (1) preliminarily approving the proposed Updated Settlement Agreement as superseding the Settlement Agreement previously approved; (2) approving the Updated Class Notice and Notice Plan, and directing that Updated Class Notice be disseminated pursuant to the Updated Notice Plan; and (3) setting new dates for a fairness hearing and other necessary dates in connection with Final Approval of the Settlement.

Dated: October 14, 2020

Respectfully Submitted,



Kim E. Richman (*pro hac vice*)
RICHMAN LAW GROUP
Clark A. Binkley (*pro hac vice*)
8 West 126th St.
New York, NY 10027
T: 718-705-4579
F: 212-687-8292
krichman@richmanlawgroup.com
cbinkley@richmanlawgroup.com

BELL LAW, LLC
Bryce B. Bell (MO#66841)
Mark W. Schmitz (MO#69329)
2600 Grand Blvd., Suite 580
Kansas City, MO 64108
T: 816-886-8206
F: 816-817-8500
Bryce@BellLawKC.com

**BAUM, HEDLUND, ARISTEI &
GOLDMAN, P.C.**
Michael L. Baum (*pro hac vice*)
R. Brent Wisner (*pro hac vice*)
10940 Wilshire Blvd., 17th Floor
Los Angeles, CA 90024
T: (310) 207-3233
mbaum@baumhedlundlaw.com
bwisner@baumhedlundlaw.com

Attorneys for Plaintiffs and the Class